



# House of Representatives

General Assembly

**File No. 475**

January Session, 2019

House Bill No. 6916

*House of Representatives, April 8, 2019*

The Committee on Labor and Public Employees reported through REP. PORTER, R. of the 94th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

***AN ACT EXPANDING REMEDIES AND POTENTIAL LIABILITY FOR  
UNREASONABLY CONTESTED OR DELAYED WORKERS'  
COMPENSATION CLAIMS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 31-300 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2019*):

3 (a) As soon as may be after the conclusion of any hearing, but no  
4 later than one hundred twenty days after such conclusion, the  
5 commissioner shall send to each party a written copy of the  
6 commissioner's findings and award. The commissioner shall, as part of  
7 the written award, inform the employee or the employee's dependent,  
8 as the case may be, of any rights the individual may have to an annual  
9 cost-of-living adjustment or to participate in a rehabilitation program  
10 administered by the Department of Rehabilitation Services under the  
11 provisions of this chapter. The commissioner shall retain the original  
12 findings and award in said commissioner's office. If no appeal from the  
13 decision is taken by either party within twenty days thereafter, such

14 award shall be final and may be enforced in the same manner as a  
15 judgment of the Superior Court. The court may issue execution upon  
16 any uncontested or final award of a commissioner in the same manner  
17 as in cases of judgments rendered in the Superior Court; and, upon the  
18 filing of an application to the court for an execution, the commissioner  
19 in whose office the award is on file shall, upon the request of the clerk  
20 of said court, send to the clerk a certified copy of such findings and  
21 award. In cases where, through the fault or neglect of the employer or  
22 insurer, adjustments of compensation have been unduly delayed, or  
23 where through such fault or neglect, payments have been unduly  
24 delayed, the commissioner [may] shall include in the award interest at  
25 the rate prescribed in section 37-3a and a reasonable attorney's fee in  
26 the case of undue delay in adjustments of compensation and [may]  
27 shall include in the award in the case of undue delay in payments of  
28 compensation, interest at twelve per cent per annum and a reasonable  
29 attorney's fee. Payments not commenced within thirty-five days after  
30 the filing of a written notice of claim shall be presumed to be unduly  
31 delayed unless a notice to contest the claim is filed in accordance with  
32 section 31-297. In cases where there has been delay in either  
33 adjustment or payment, which delay has not been due to the fault or  
34 neglect of the employer or insurer, whether such delay was caused by  
35 appeals or otherwise, the commissioner [may] shall allow interest at  
36 such rate, not to exceed the rate prescribed in section 37-3a, as may be  
37 fair and reasonable, taking into account whatever advantage the  
38 employer or insurer, as the case may be, may have had from the use of  
39 the money, the burden of showing that the rate in such case should be  
40 less than the rate prescribed in section 37-3a to be upon the employer  
41 or insurer. In cases where the claimant prevails and the commissioner  
42 finds that the employer or insurer has unreasonably contested liability,  
43 the commissioner [may] shall allow to the claimant a reasonable  
44 attorney's fee. No employer or insurer shall discontinue or reduce  
45 payment on account of total or partial incapacity under any such  
46 award, if it is claimed by or on behalf of the injured person that such  
47 person's incapacity still continues, unless such employer or insurer  
48 notifies the commissioner and the employee of such proposed

49 discontinuance or reduction in the manner prescribed in section 31-296  
50 and the commissioner specifically approves such discontinuance or  
51 reduction in writing. The commissioner shall render the decision  
52 within fourteen days of receipt of such notice and shall forward to all  
53 parties to the claim a copy of the decision not later than seven days  
54 after the decision has been rendered. If the decision of the  
55 commissioner finds for the employer or insurer, the injured person  
56 shall return any wrongful payments received from the day designated  
57 by the commissioner as the effective date for the discontinuance or  
58 reduction of benefits. Any employee whose benefits for total incapacity  
59 are discontinued under the provisions of this section and who is  
60 entitled to receive benefits for partial incapacity as a result of an  
61 award, shall receive those benefits commencing the day following the  
62 designated effective date for the discontinuance of benefits for total  
63 incapacity. In any case where the commissioner finds that the  
64 employer or insurer has discontinued or reduced any such payment  
65 without having given such notice and without the commissioner  
66 having approved such discontinuance or reduction in writing, the  
67 commissioner shall allow the claimant a reasonable attorney's fee  
68 together with interest at the rate prescribed in section 37-3a on the  
69 discontinued or reduced payments.

70 (b) The provisions of subsection (a) of section 31-284 with respect to  
71 the exclusivity of remedy between the employee and the employer  
72 shall not apply to an action by an employee against an insurer or third-  
73 party administrator for breach of the covenant of good faith and fair  
74 dealing in the handling of claims under this chapter or for a violation  
75 of chapter 704 or 735a or section 38a-815 or 42-110b. A claimant for  
76 benefits under this chapter is a third-party beneficiary of a contract of  
77 insurance for an employer's liability for benefits under this chapter and  
78 of a contract for a third-party administration of claims for benefits  
79 under this chapter, and such insurer or third-party administrator owes  
80 to such a claimant a duty of good faith and fair dealing and a duty not  
81 to contest benefits unreasonably nor to delay benefits unreasonably.  
82 The provisions of chapters 704 and 735a do not preempt a common-  
83 law action for breach of this covenant of good faith and fair dealing

84 and exhaustion of administrative remedies under this chapter is not  
 85 required prior to the filing of such action, provided benefits awarded  
 86 or penalties imposed pursuant to chapter 568 shall be credited against  
 87 any duplicative damages awarded pursuant to such action. Damages  
 88 in successful actions against an insurer or third-party administrator  
 89 under this subsection may include, but need not be limited to,  
 90 demonstrable economic damages, damages for mental or physical  
 91 injury, pain or suffering arising from the misconduct of the insurer or  
 92 third-party administrator and attorneys' fees.

93 (c) No insurer, third-party administrator or organization authorized  
 94 to handle workers' compensation claims pursuant to chapter 568 shall  
 95 be allowed to seek indemnification from any employer or organization  
 96 as a result of a claim brought pursuant to this section.

97 (d) No insurer, third-party administrator or organization authorized  
 98 to handle workers' compensation claims pursuant to chapter 568 shall  
 99 seek increases in premium or agreed-upon compensation due to any  
 100 claim brought pursuant to this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2019	31-300

**LAB**      *Joint Favorable*

*The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.*

## **OFA Fiscal Note**

### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 20 \$</b>	<b>FY 21 \$</b>
Department of Administrative Services	GF -Cost	See Below	See Below
Workers' Compensation Commission <sup>1</sup>	WCF- Cost	At Least \$650,000	At Least \$683,000
State Comptroller - Miscellaneous	GF - Potential Cost	See Below	See Below
Attorney General	GF - Potential Revenue Gain	See Below	See Below

Note: GF=General Fund, WCF = Workers' Compensation Fund

### **Municipal Impact:**

<b>Municipalities</b>	<b>Effect</b>	<b>FY 20 \$</b>	<b>FY 21 \$</b>
All Municipalities	STATE MANDATE <sup>2</sup> - Cost	See Below	See Below

## **Explanation**

The bill will result in a cost to the Workers' Compensation Commission (WCC) to the extent the bill results in additional formal hearings of at least \$650,000 in FY 20 and \$683,000 for salaries and fringe benefits for additional hearing reporters, paralegals and

<sup>1</sup> The fringe benefit costs for employees funded out of other appropriated funds are budgeted within the fringe benefit account of those funds, as opposed to the fringe benefit accounts within the Office of the State Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes for other appropriated fund employees is 97.18% of payroll in FY 20 and FY 21.

<sup>2</sup> State mandate is defined in Sec. 2-32b(2) of the Connecticut General Statutes, "state mandate" means any state initiated constitutional, statutory or executive action that requires a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.

processing technicians, related to section 1(a).<sup>3</sup> Additional formal hearings will be necessary due to the bill requiring, rather than permitting under current law, that a Commissioner imposes penalties for undue delays. This requirement will increase the number of formal hearings, including the right to the appeal process and necessitate a written decision from a Commissioner. Unlike an informal hearing or pre-formal hearing where there are no stenographic records, a formal hearing is a trial that includes evidence, witness testimony under oath, a stenographic record of the proceedings, and a written decision by a Commissioner. Currently, 95% of all cases are resolved at the informal or pre-formal level as current law gives the Commissioner the discretion to work with parties outside of the formal hearing process.<sup>4</sup>

In addition, in the case of the state and self-insured municipalities<sup>5</sup> the cost to defend against a lawsuit will result in increased third party administrator (TPA) contract costs pursuant. For fully insured municipalities the cost will be reflected in future premiums for their workers' compensation policies effective on and after October 19, 2019. The bill's provisions will require companies which provide workers' compensation coverage and TPAs, to insure/contract for the risk of having to defend against a potential lawsuit as well as potential claims for which they are found liable. Currently, there is no such remedy available to the claimant.

The bill allows the claimant to file the lawsuit in superior court pursuant to the following causes of action (1) a breach of the covenant of good faith and fair dealing and (2) that the entity's actions constitute an unfair and deceptive trade practice pursuant to the Connecticut Unfair Trade Practices Act (CUTPA) or the Connecticut Unfair Insurance Practices Act (CUIPA). While the bill does not allow the

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<sup>3</sup> The estimate assumes 2 additional staff in each job class to support additional hearings in all 8 district offices. Starting salaries for the job classes are as follows: \$56,640 – hearing reporter, \$62,300 paralegal specialist and \$46,721 processing technician.

<sup>4</sup> In Fiscal Year 2018, 585 formal hearings were held by the Commission compared to over 38,000 informal and pre-formal hearings.

<sup>5</sup> There are currently 34 self-insured municipalities.

TPA/insurer to increase rates in the future resulting from a judgement against a TPA, the bill does not preclude the TPA/insurer from assessing the impact of the risk in premiums. In addition, the bill may result in a revenue gain to the General Fund to the extent additional fines or penalties are assessed for violations of the CUTPA or CUIPA.

Lastly, to the extent that a suit is filed against the state's TPA and (1) the TPA either includes the state as a party to the lawsuit or (2) the petitioner or the TPA is granted leave to sue the state by the Claims Commissioner, the state could be directly liable for any award provided to the petitioner. A similar fiscal impact could be borne by a municipality.

### ***The Out Years***

The annualized ongoing fiscal impact identified above will continue into the future subject to the impact the bill's provisions have on WCC staff, TPA and insurance premiums costs and the amount of fines/penalties imposed.

**OLR Bill Analysis****HB 6916*****AN ACT EXPANDING REMEDIES AND POTENTIAL LIABILITY FOR UNREASONABLY CONTESTED OR DELAYED WORKERS' COMPENSATION CLAIMS.*****SUMMARY**

This bill allows a workers' compensation claimant to bring an action against a workers' compensation insurer or third party administrator (TPA) for (1) a breach of the covenant of good faith and fair dealing in handling workers' compensation claims or (2) violating the Connecticut Unfair Insurance Practices Act (CUIPA) or Connecticut Unfair Trade Practices Act (CUTPA). Current law generally requires all workers' compensation-related issues to be adjudicated within the workers' compensation system (see BACKGROUND).

The bill prohibits workers' compensation insurers and TPAs from seeking indemnification from an employer or organization, or increasing premiums or agreed-upon compensation, due to any claim brought under the bill.

The bill also requires workers' compensation commissioners to impose certain costs on employers or insurers who have unduly delayed providing workers' compensation benefits. Current law allows, but does not require, the commissioners to impose these costs.

EFFECTIVE DATE: October 1, 2019

**ACTIONS FOR COVENANT OF GOOD FAITH, CUIPA, OR CUTPA VIOLATIONS**

Under the workers' compensation law's "exclusivity provision," an employer who provides workers' compensation insurance coverage for its employees is not liable in any action for damages on account of an employee's work-related personal injury (CGS § 31-284(a)). Under



current law, the provision generally requires workers' compensation-related issues to be adjudicated within the workers' compensation system and prohibits claimants from bringing a separate action against an insurer for bad faith processing of a workers' compensation claim.

The bill exempts from the exclusivity provision, actions against a workers' compensation insurer or TPA for (1) a breach of the covenant of good faith and fair dealing in handling workers' compensation claims or (2) violating CUIPA or CUTPA.

Under the bill, a claimant for workers' compensation benefits is a third-party beneficiary of (1) an insurance contract for an employer's liability for workers' compensation benefits and (2) a contract for third-party administration of claims for workers' compensation benefits. And such an insurer or TPA owes the claimant a duty of good faith and fair dealing and a duty not to unreasonably contest or delay benefits.

The bill specifies that CUIPA and CUTPA do not preempt a common law action for breach of this covenant of good faith and fair dealing. It also allows a claimant to bring an action before exhausting the administrative remedies under the workers' compensation law (i.e., while his or her case is proceeding through the workers' compensation system).

The bill allows damages in actions against an insurer or TPA to include demonstrable economic damages, damages for mental or physical injury, pain or suffering arising from the insurer's or TPA's misconduct, and attorneys' fees. But, any benefits awarded or penalties imposed under the workers' compensation law must be credited against any duplicative damages awarded in the other action.

#### **REQUIRED WORKERS' COMPENSATION COSTS**

The bill requires, rather than allows, workers' compensation commissioners to award:

1. 10% interest and attorneys' fees in cases of an undue delay in

adjusting compensation due to an employer's or insurer's fault or neglect;

2. 12% interest and attorneys' fees in cases of undue delay in paying compensation due to an employer's or insurer's fault or neglect;
3. up to 10% interest in cases where the delay in adjustment or payment of compensation was not due to the employer's or insurers' fault or neglect; and
4. reasonable attorneys' fees in cases where the employer or insurer unreasonably contests liability.

## **BACKGROUND**

### ***Related Case***

In *DeOliveira v. Liberty Mutual Insurance Co.* (273 Conn. 487 (2005)), the state Supreme Court ruled, among other things, that the workers' compensation law's exclusivity provision barred separate suits against an insurer for bad faith processing of a workers' compensation claim. According to the Court, the provision applied because in CGS §§ 31-288 and 31-300, the legislature expressly gave the workers' compensation commissioners authority to adjudicate claims related to untimely payment of benefits and provide remedies for them.

### ***Connecticut Unfair Trade Practices Act (CUTPA)***

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$10,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

**Connecticut Unfair Insurance Practices Act (CUIPA)**

The law prohibits engaging in unfair or deceptive acts or practices in the business of insurance. It authorizes the insurance commissioner to conduct investigations and hearings, issue cease and desist orders, impose fines, revoke or suspend licenses, and order restitution for per se violations (i.e., violations specifically listed in statute). The law also allows the commissioner to ask the attorney general to seek injunctive relief in Superior Court if he believes someone is engaging in other unfair or deceptive acts not specifically defined in the statute.

Fines may be up to (1) \$5,000 per violation to a \$50,000 maximum or (2) \$25,000 per violation to a \$250,000 maximum in any six-month period if the violation was knowingly committed. The law also imposes a fine of up to \$50,000, in addition to or in lieu of a license suspension or revocation, for violating a cease and desist order.

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable

Yea 13      Nay 0      (03/21/2019)